



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/169896

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 06, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on December 03, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined the Petitioner was overpaid \$10,414.86 in child care benefits from September 1, 2014 through August 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On October 19, 2015, the agency sent the Petitioner an automated Child Care Overpayment Notice, claim number [REDACTED], in the amount of \$10,414.86 for the period of September 1, 2014 through August 31, 2015. (Exhibit 20)
3. Also on October 19, 2015, the agency issued a manual Child Care Client Overpayment Notice, again alleging an overpayment of \$10,414.86 of the period of September 1, 2014 through August 31, 2015. (Exhibit 21)
4. The agency did not include an overpayment worksheet with either notice. (Testimony of Jacquetta Gilman, Child Care Fraud Accountant; Exhibits 20 and 21)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 6, 2015. (Exhibit 1)

### DISCUSSION

“All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client.” *Wisconsin Shares Child Care Manual (CCM)*<sup>1</sup> §3.5.2; See also §2.1.4.2, *Wis. Admin. Code §DCF 101.23* and *Wis. Stat. § 49.195(3)*

In other words, it doesn’t matter who caused the overpayment; the county agency is legally required to seek recovery of all overpayments of child care benefits.

However, when overpayments are caused by agency error, the claim only extends back 12 months from the date of discovery. *CCM* §3.5.2

The Seventh Circuit Court of Appeals held that the demands of Procedural Due Process require that recipients of public assistance be given adequate notice of adverse action. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980). This holding is reflected in Wisconsin policy:

“Each client has the right to adequate and timely notice of adverse action.” *Income Maintenance Manual (IMM)* §§ 3.2.1 and 3.2.2

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. See also *CCM* §3.5.2

In this case, the agency failed to give the Petitioner adequate notice of the overpayment, because its overpayment notices did not contain a detailed overpayment worksheet, showing how the agency calculated the Petitioner’s income and how it calculated the overpayment. The Court of Appeals in *Dilda v. Quern*, found that a State Agency had violated the due process of rights of public assistance recipients, because the notice advising them of the reduction or cancellation of their benefits failed to provide the recipient with a detailed notice showing the breakdown of income and allowable deductions. *Dilda v. Quern*, 612 F. 2d 1055 (7<sup>th</sup> Cir. 1980)

Because the agency did not provide the Petitioner with adequate notice, its overpayment determination cannot be upheld at this time. Further, it is not the purview of this tribunal to create an overpayment worksheet to cover 12 months’ worth of overpayment calculations.

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<sup>1</sup> The Wisconsin Shares Child Care Assistance Manual can be viewed on line at:

<http://dcf.wisconsin.gov/childcare/ccpolicymanual/index.htm#Welcome.htm>

The agency will have to rescind its overpayment claim. The agency may, however, issue to the Petitioner a new overpayment claim that includes an overpayment worksheet, showing the agency's work; in other words how it calculated her household income and how it calculated the overpayment amount.

If the Petitioner still disagrees with the overpayment determination, she will have to file a NEW appeal.

### **CONCLUSIONS OF LAW**

The agency has not met its burden to prove it correctly determined the Petitioner was overpaid \$10,414.86 in child care benefits from September 1, 2014 through August 31, 2015.

**THEREFORE, it is**

### **ORDERED**

That the agency rescind overpayment claim number [REDACTED] in the amount of \$10,414.86, for the period of September 1, 2014 through August 31, 2015. The agency shall take all administrative steps necessary to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of January, 2016

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 21, 2016.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud